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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/781,929

02/20/2004

Michael K. Gunaratnam

4398-324

9694

23117

7590

06/07/2007

NIXON & VANDERHYE, PC

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ARLINGTON, VA 22203

EXAMINER

MITCHELL, TEENA KAY

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

06/07/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

NT

<b>Office Action Summary</b>	<b>Application No.</b> 10/781,929	<b>Applicant(s)</b> GUNARATNAM ET AL.	
	<b>Examiner</b> Teena Mitchell	<b>Art Unit</b> 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 53-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 67-73 is/are allowed.
- 6) ☒ Claim(s) 53 is/are rejected.
- 7) ☒ Claim(s) 54-66 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/13/05; 11/22/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

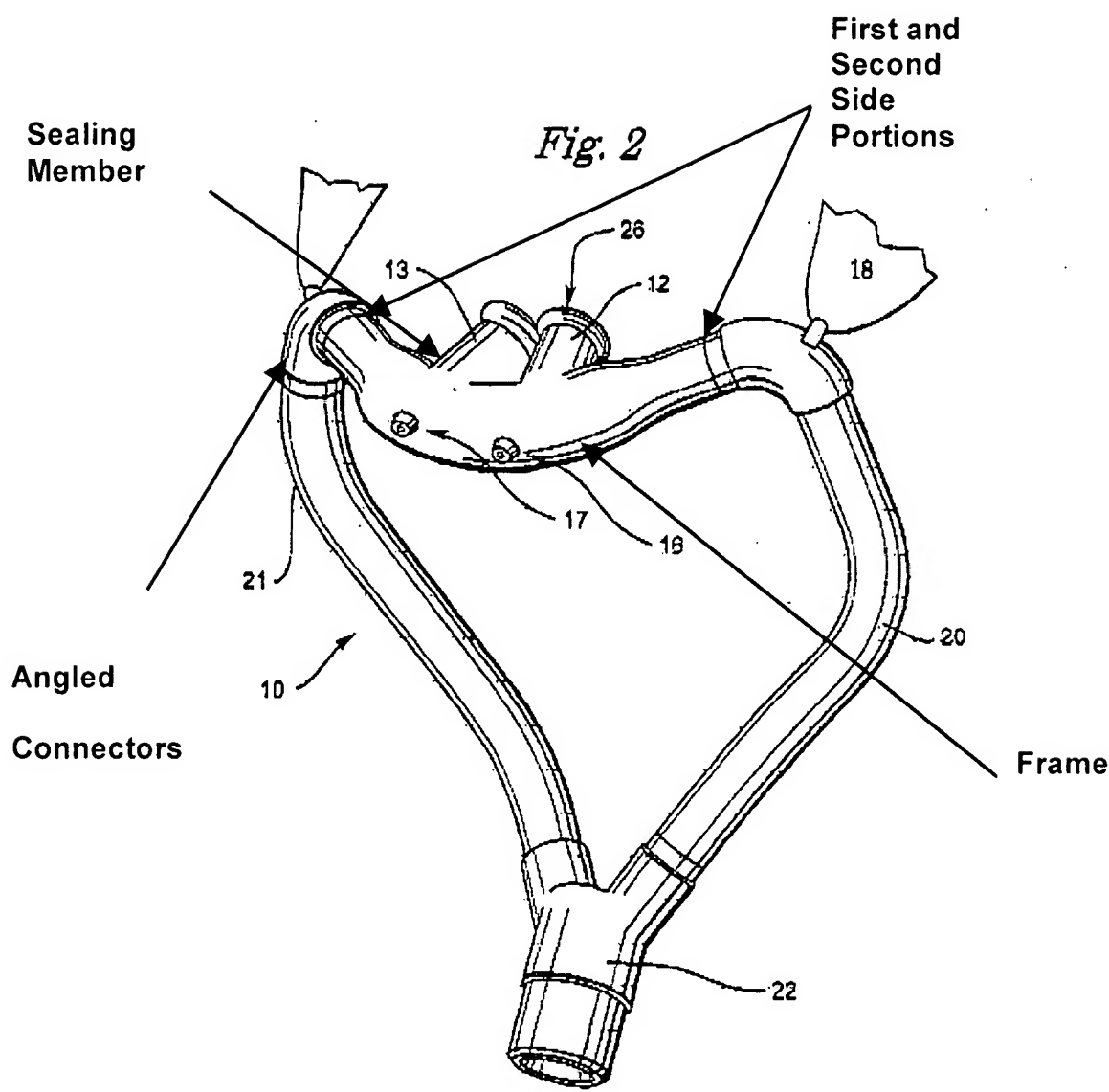
This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strickland et.al. (6,679,265) in view of McKesson (1,632,449).**

Regarding claim 53 Strickland discloses a frame in including a substantially rigid central portion (note illustration of Fig. 2 below), a first side portion provided to a first lateral side of the central portion, and a second side portion provided to a second lateral side of the central portion (note illustration of Fig. 2 below); a sealing member (12) provided to the central portion of the frame and adapted to form a seal with the patient's nose in use; first and second inlet conduits (20, 21), each inlet conduit having a first end and second end; first and second angled connectors (note illustration of Fig. 2 below) provided between the first end of the first inlet conduit and the first side portion of the frame, and the second angled connector provided between the first end of the second inlet conduit and the second side portion of the frame (note illustration of Fig. 2); first and second angled connectors (note illustration of Fig. 2 below) the first angled connector provided between the first end of the first inlet conduit and the first side portion of the frame, and the second angled connector provided between the first end of the second inlet conduit and the second side portion of the frame (note illustration of Fig. 2 below); a generally Y-shaped connector (22) that interconnects the inlet conduits with a supply of breathable gas, the Y-shaped connector including a first connector portion to engage the second end of the first inlet conduit and a second connector portion to engage the second end of the second inlet conduit, the first connector portion being angled with respect to the second connector portion (note illustration of Fig. 2 below); and a headgear assembly (18) to support the frame and the sealing member in

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a desired position on the patient's face. The difference between Strickland and claim 53 is the headgear assembly including a pair of straps and a rear portion. McKesson in a facemask teaches a pair of straps (14) and a rear portion (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the headgear assembly of Strickland to employ any well-known headgear assembly including the headgear assembly of McKesson because the headgear assembly of McKesson would provide a user a more secure headgear assembly to maintain the mask in the proper position when the user moves.



***Allowable Subject Matter***

Claims 54-66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 67-73 are allowable over the prior art of record.

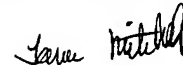
The following is a statement of reasons for the indication of allowable subject matter: The overall combination of claim 67 with an elongated member having a central portion that supports the main conduit portion and first and second side portions supporting slotted headgear connectors, the central portion including a pair of openings adapted to retain and locate the main conduit portion. The sealing member being removably coupled to the central portion of the frame and the plurality of visual indicators that can be selectively matched with a reference indicator provided adjacent the visual indicators to indicate a degree of angular adjustments is neither anticipated nor rendered obvious by the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Teena Mitchell  
Primary Examiner  
Art Unit 3771  
May 18, 2007

  
TKM